

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

GREGORY MOORE	§	
v.	§	CIVIL ACTION NO. 6:03cv82
JANIE COCKRELL, ET AL.	§	

ORDER DENYING MOTION FOR RELIEF FROM JUDGMENT

The Plaintiff Gregory Moore, an inmate of the Texas Department of Criminal Justice, Correctional Institutions Division, filed this civil rights lawsuit under 42 U.S.C. §1983 complaining of alleged violations of his constitutional rights. On June 27, 2008, the Fifth Circuit handed down a ruling on an interlocutory appeal in the case. The final paragraph of this ruling reads as follows:

For the foregoing reasons, we REVERSE the district court's denial of qualified immunity to [the remaining defendants] Lightfoot and Guyton, and we REMAND with direction that the district court enter its order dismissing Moore's §1983 claims.

Based on this ruling from the Fifth Circuit, the district court entered judgment on August 21, 2008, dismissing Moore's lawsuit.

On September 2, 2008, Moore filed a motion for relief from judgment. In this motion, he says that he still has a valid claim against the Defendants Guyton and Buentello [sic], that these two defendants did not assert qualified immunity in their motion for summary judgment filed at docket no. 264, the district court did not rule on the merits of this, and the issue was not raised on appeal at the Fifth Circuit. He then goes on to argue the merits of his claims, and asks that he be allowed to proceed on his claims against Guyton and Lightfoot.

The Defendant J.P. Guyton filed a response saying that Moore's motion is simply a last-ditch effort to keep his lawsuit alive in the face of the Fifth Circuit's decision to grant Guyton immunity. Moore has filed a reply saying that he has "established a manifest error of law and fact."

On October 27, 2008, the Fifth Circuit issued a revised opinion in the case. However, the revisions did not affect the ultimate outcome; the concluding paragraph of the revised opinion is identical to the concluding paragraph in the original, in that it directed that the district court enter judgment dismissing Moore's lawsuit.

This Court lacks power to grant Moore's motion for reconsideration of the dismissal of his case, given that this dismissal was mandated by order of the Fifth Circuit Court of Appeals. While Moore appears to argue that the Fifth Circuit's decision was incorrect and that the Defendants were not entitled to qualified immunity, that is not a determination which the district court can make. It is accordingly

ORDERED that the Plaintiff's motion for relief from judgment, filed September 2, 2008 (docket no. 293) is DENIED.

So ORDERED and SIGNED this 5th day of November, 2008.

A handwritten signature in black ink, appearing to read 'Leonard Davis', written over a horizontal line.

**LEONARD DAVIS
UNITED STATES DISTRICT JUDGE**